Supreme Court, U. S.
FILED
SEP 15 1976
MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1262

UNITED STATES OF AMERICA, et al.,
Appellants,

vs.

COUNTY OF FRESNO
Appellee.

UNITED STATES OF AMERICA, et al.,
Appellants,

vs.

COUNTY OF TUOLUMNE
Appellee.

On Appeal from the California Court of Appeal,
Fifth Appellate District

Brief for Appellee, County of Fresno

ROBERT M. WASH,
County Counsel

JAMES B. WATERMAN,
Deputy County Counsel
4499 East Kings Canyon Road
Fresno, California 93702
Telephone: (209) 488-3797

Counsel for Appellee
County of Fresno

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

INDEX

Page

Statement 1

Summary of Argument 4

Argument:

The California possessory interest tax imposed on the personal occupancy rights of federal employees in their Government-owned housing does not violate the constitutional immunity of the United States from state taxation.

A. Introduction 4

B. Taxation of the employees' possessory interest in Government-owned housing is not a tax against the operations or an instrumentality of the United States 9

C. The California possessory interest tax as applied in the instant case, creates no burden on the Federal Government 13

Conclusion 15

Appendix 16

CITATIONS

Cases	Pages
Alabama v. King and Boozer 314 U.S. 1	3
Board of Supervisors v. Archer 13 CA 3d 717	14
Cohn v. Graves 300 U.S. 308	13
Department of Employment v. United States 385 U.S. 355	6
Detroit v. Murray Corporation 355 U.S. 489	10
Georgia Pacific Corporation v. County of Mendocino, et. al. 327 F. Supp. 380 (C.A. 9)	13
Graves v. New York ex rel O'Keefe 306 U.S. 466	6, 7, 11, 13
Irwin v. Wright 258 U.S. 219	8
McCulloch v. Maryland 4 Wheat 316	4, 5, 11
Osborne v. Bank of United States 9 Wheat 738	5
Penn Dairies v. Milk Control Comm'n, 318 U.S. 261	11
People v. Shearer 30 Cal 465	13
S.R.A. v. Minnesota 327 U.S. 558	9
Standard Oil Company v. Johnson 316 U.S. 481	6
Union Pacific Railroad v. Peniston 18 Wall 5	5
United States v. Boyd 378 U.S. 39	6
United States v. City of Detroit 355 U.S. 466	11
United States v. County of Allegheny 322 U.S. 174	9, 10
United States v. Richert 188 U.S. 432	8
Wilson v. Cook 327 U.S. 474	13

	Pages
United States Constitution:	
Article VI, Section 2 (Supremacy Clause)	3, 4
5 U.S.C. 75a	7
16 U.S.C. 480	12
California Constitution Article XIII, Section 1	2, Appendix 5
California Revenue and Taxation Code Section 104	2, Appendix 6
California Revenue and Taxation Code Section 107	2, Appendix 7
California Revenue and Taxation Code Section 201	2, Appendix 1
California Revenue and Taxation Code Section 4986	4, Appendix 1
MISCELLANEOUS	
U.S. Congress and Administrative News. Vol. 2, 1964, Page 3006, 3012	7
U.S. News and World Report Vol. LXXXI No. 7, August 16, 1976, Pages 22, 25	15

In the

Supreme Court of the United States

October Term, 1976

No. 75-1262

United States of America, et al.,
Appellants,

vs.

County of Fresno
Appellee.

United States of America, et al.,
Appellants,

vs.

County of Tuolumne
Appellee.

On Appeal from the California Court of Appeal,
Fifth Appellate District

Brief for Appellee, County of Fresno

STATEMENT

1. Respondent, County of Fresno, generally agrees with the *Statement* as set forth in the Brief for the Appellants. It should be stated, however, that the government housing which was assessed and taxed to the individual employees, were in all cases occupied by the employee, his wife and children, if any, as their personal residence. The only areas in such housing which were considered for purposes of determining the value to the employee thereof were the family living portions. i.e. living room, bedrooms, bath-

rooms. Furthermore, only such housing as was classified by the Government as "exclusive" i.e. exclusive possession to the employee were assessed by respondent. (Plaintiffs Exh. 3, A. 173). The landlord-tenant relationship between the government and its individual employee is well recognized by the Government's own regulations. (Plaintiffs Exh. 2, A. 146) Furthermore, the rental rates established, established by the rental regulations specify that the rental charges shall reflect the reasonable rental value thereof *to the employee* (Plaintiff's Exh 2, A. 166)

In spite of the seemingly complex and stringent controls over appellants' occupancies of their housing, and the fact such housing was exposed to the public there was no restriction on the right of the employee to place his own lock on the private portion of the residences (A. 57).

2. Under the California Constitution Article XIII, Section 1 and California Revenue & Taxation Code Sections 201, 104 and 107 respondent was required to assess appellant's possessor interests in improvements and land, owned by tax exempt entities, including the United States.

In response to Footnote 3, page 8, Brief For the Appellants, it should be pointed out, that while the Forest Service was authorized to and did lease privately-owned houses for its employees, outside of the National Forests, and on private land, assigning its employees thereto on the same basis as government owned housing located on federal land within the National Forests, that in making the lease payments (which usually were in excess of the amount charged to the employee by the government), the federal government was making an indirect payment to Appellee for an amount equal to the property taxes assessed to the private owner thereof. Under California law, the lessee and lessor of privately owned real property are

not separately assessed, with the owner-lessor being assessed for the full cash value of land and improvements and if leased, passing on the amount of the property tax to the lessee, in this case the government. No objection or challenge has been made to this practice, which presents something of an equal protection problem for the employee living in privately owned housing, paid for by the government, and not being separately assessed for a possessory interest for his personal beneficial interest in the government leased housing, as compared with the employee residing in government owned housing, and being separately assessed for his possessory interest in such tax-exempt property. As will be further developed in the argument to follow, constitutional principals do not prohibit the payment of such tax in either situation. *Alabama* v. *King and Boozer,* 314 US 1.

It should be emphasized that the trial court, while it held against Appellee County, did find at least an incidental personal benefit to each of the employees involved. The California District Court of Appeal, Fifth Appellate District, reversed the decision of the trial court in both cases, holding as a matter of law, that the individual appellants enjoyed assessable, taxable possessory interests in their government owned housing, (J.S. App B, 67a-68a) and that assessment of such taxes against the individual employee did not violate the Constitution. On Petition for Hearing to the California Supreme Court, said Court denied a hearing.

These cases now come before this Court on the appellant's sole contention that the imposition of such tax against the individual employee violates the United States Constitution, Article VI, Section 2 (Supremacy Clause); appellant's additional major contention that the California possessory interest tax as imposed, unlawfully discriminated against the United States and its employees, having been expressly abandoned. (Brief for Appellants, p. 15 FN 6).

SUMMARY OF ARGUMENT

The possessory interest tax assessed by respondent is a tax on the individual employee's property interest, and therefor is not a tax against an instramentality of the United States, even though the value of the Possessory Interest is measured by the value of government owned property which is not assessed. There is no possibility that any property owned by the government will be subject to a lien for unpaid taxes, as such unpaid taxes are by law, transferred to the unsecured property tax rolls, and collected as any other personal debt of the assessee. (Revenue & Taxation Code Section 4986). The individual employees, in being assessed for their own possessory interests in housing their families, are not clothed with the immunity of their employer, the United States. There is no burden imposed on the Government in the assessment or collection of these taxes, and their obligations of state citizenship requires payment of these taxes.

ARGUMENT

The California Possessory Interest Tax Imposed on the Personal Occupancy Rights of Federal Employees in Their Government Owned Housing Does Not Violate the Constitutional Immunity of the United States From State Taxation.

A. Introduction

McCulloch v. *Maryland* 4 Wheat 316 does not prohibit a state tax on a property interest of a Federal employee in Government owned housing. *McCulloch* dealt with a state tax on the notes of a Bank chartered by the United States, which was properly held invalid under the Supremacy Clause. (U.S. Const. Art VI, Sec 2). However, the prohibition against state taxation was limited to any tax or regulation on the "operations of the Constitutional laws enacted by Congress to carry into execution the powers vested in the general government." The Court expressly

excepted the "property" of such agency, stating at p. 436, "It (this opinion) does not extend to a tax paid by the real property of the bank in common with the other real property within the state, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution in common with other property of the same description throughout the state."

So here, the possessory interest tax is laid against the employees possessory right or property, in his personal housing, which is taxed in common with all similar single family residences located with the state, owned by individuals or employees or tenants of tax-exempt entities.

The exception set forth in *McCulloch, supra,* was followed in *Osborne* v. *Bank of United States* 9 Wheat 738, Justice Marshall stating at page 867, "It is true that the property of the contractors may be taxed, as the property of other citizens, and so may the local property of the bank. But we do not admit that the act of purchasing, or of conveying the articles purchased, can be under state control." Also in accord: *Union Pacific Railroad* v. *Peniston* 18 Wall 5, 34-37.

It seems obvious that the possessory interest tax imposed against the personal beneficial use of government property by Forest Service employees cannot be construed to be a tax against the operations or instramentalities of the United States, and yet Appellants at page 13 of "Brief for the Appellants" contend that the tax is a direct tax against "the activities of the federal government itself." This is in spite of a complete lack of evidence in the case that the imposition of the California possessory interest tax had any effect at all on the operations of the Forest Service or its activities in administering the National Forests. Upon reflection it is difficult to perceive a situation where the tax could conceivably effect the Government.

The cases cited at page 14 in "Brief For Appellants" can be easily distinguished from the instant appeal. *Standard Oil Company* v. *Johnson* 316 US 481, involved a state license tax on the privilege of distributing gasoline, and was held to be inapplicable to sales to U.S. Military Post Exchanges, which were considered arms of the government (and also generally located in exclusive federal enclaves). *United States* v. *Boyd* 378 US 39, cited by appellants, actually supports the contentions of appellee. *Boyd,* involved a state *use tax* on property owned by the United States but used by a private contractor in implementing its contracts with the Government. In upholding the tax, the Court said at page 45, "... from the facts of this record it is incredible to conclude that the use of government owned property was for the sole benefit of the government." (Both companies had a separate taxable interest).

In *Department of Employment* v. *United States* 385 US 355, Colorado imposed an unemployment compensation tax upon the United States Red Cross, the tax being measured by the amount paid to its employees. Held, the Red Cross is an instrumentality of the U.S. for the purposes of immunity from State taxation levied on its operations, and the tax void. The distinguishing factor is that the state tax was laid directly on the federal instramentality and not against the personal, beneficial interest of the individual employee, as in the instant case.

The above-cited cases simply do not support appellant's argument that the "tax immunity of the United States covers the Forest Service and its personnel."

Such a contention flies directly in the face of decisions of this Court such as *Graves* v. *New York ex rel O'Keefe* 306 US 466 which upheld the right of the state to tax the income of a federal employee residing within the state, stating at page 481, "... the only possible basis for imply-

ing a constitutional immunity from state income tax of the salary of an employee of the national government or of a governmental agency is that of the economic burden of the tax is in some way passed on so as to impose a burden on the national government tantamount to an interference by one government with the other in the performance of its functions. (held, this was not a sufficient basis for invalidating the tax).

Of more direct applicability to the tax in issue in the present case, is the language of the Court is *Graves, supra,* page 486 "(There is) no basis for a difference in result whether the taxed income the salary or *some other form of compensation.* No economic burden that would justify ... a tax payer being clothed with the implied constitutional tax immunity of the government by which he is employed ..."

Here, while the individual employees paid a rental or fee for their occupancy of governmental housing, there was evidence that the rentals paid were not commensurate with the actual cash value of the use and enjoyment of such housing. The fact that a rental fee was charged by the government at all would lend support to appellee's position, (and the District Court of Appeal's holding) that these employees did have a taxable personal benefit from their use of government housing. If in fact the value of the housing to the employee, exceeded the amount of the rental charge therefor, this difference would be a bonus or "another form of compensation" to such employee. Further, it is an elementary rule of economics that one does not pay for something that has no value to him.*

---

*5 USC 75a provides "that the reasonable value of such allowance (for quarters furnished civilian employees) shall be determined and considered a part of the compensation in fixing the salary rate for such circumstances." This statute is discussed in "U.S. Congress & Administrative News," Vol. 2, 1964, page 3006 in connection with the legislative history of S. 1833, (House Report No. 1459, in part)

It would seem that if as appellants contend their sole purpose in occupying the government housing was for the convenience of the government, and to further facilitate the government's mission in administering the national forests that there would be no requirement that the individual employee pay a rent therefor. The idea of rent, equates a value in the use and occupation of the person paying such rent, and therefor such a value, "to the individual" is taxable.

The examples of non-taxability of soldiers use of governmental housing on military bases or the taxability of soldiers uniforms as set forth in Appellant's Brief, page 17 and 18 are specious and inapposite. Military bases are federal enclaves, and the taxation therein is specifically left to the Federal Government, by the acts of Congress creating them.

The decisions cited by appellant involving state taxation of Indian trust lands (*United States* v. *Richert* 188 US 432) and the case of *Irwin* v. *Wright* 258 US 219, are similarly

as follows: "This law established theequitable principal that the government should charge employees the reasonable value of quarters and related items furnished to them. However, it does not by its terms apply to those Government quarters which are occupied by members of the uniformed services on a rental basis..."

"Section 3 requires that rates for rental of quarters and charges for facilities shall be based on the reasonable value of the quarters and facilities to the employee... Reasonable value of the rental rates and charges will be determined by the rule of "equivalence" (with comparable private housing located in the same area)." At page 3012, *op cit*, there is reported a letter from Joseph Campbell, Comptroller General of the United States to the Honorable Tom Murray, H. R., dated May 13, 1964, which states in part: "Our experience with Circular A-45 indicates that in practice, some Government agencies have not been charging rents that are equivalent or comparable to rents charged for private housing in the area." Appellee's Chief Appraiser also found this to be true in assessing the possessory interests involved in this case. (A. 112).

inapplicable because of the peculiar nature of Indian trust lands and property in the first cited-case, and the fact that in the latter, it was held that a homesteader assessee had no taxable equitable interest.

In *S.R.A.* v. *Minnesota,* 327 US 558, cited by appellants, a state tax directly against an equitable interest of a private taxpayer, and purchaser of real property in which the United States held legal title for security purposes was upheld, distinguishing *United States* v. *County of Allegheny* 322 US 174.

B. Taxation of the Employees Possessory Interest in Government Owned Housing Is Not a Tax Against the Operations or an Instrumentality of the United States.

In *United States* v. *County of Allegheny, supra* this Court struck down a state tax levied on machinery owned by the United States located on real property owned by Mesta. In so holding, this Court at page 186, states "Mesta has some legal and beneficial interest in the property (machinery). Whether such a right of possession and use in view of all the circumstances could be taxed by appropriate proceedings we do not decide. (Here) the State has made no effort to segregate Mesta's interest and tax it. The full value of the property including the whole ownership interest, as well as whatever value proper appraisal might attribute to the leasehold, was included in Mesta's assessment."

In the instant case, the employee's taxable interest in his personal living quarters has been segregated from any interest in the real property or improvement owned by the United States.

As the Court in *Allegheny, supra,* points out at page 187, 188, "The Government is an abstraction and its possession and custody of Government property nearly always are in someone who is not himself the Government but acts in its

behalf and for its purposes. He may be an officer, an agent, or a contractor. His personal advantages from the relationship by way of salary, profit, or *beneficial use* of the property may be taxed as we have held." (emphasis supplied).

Here, appellee has segregated the possessory interest of the employee, and levied a tax only against that interest. The government's interest has not been assessed.

Appellant's contentions are further bolstered by this Court's decisions in the so-called "Michigan" cases, which followed *Allegheny.*

Detroit v. *Murray Corp.* 355 US 489, involved a possessory interest tax against materials owned by the United States, in possession of a private contractor. In upholding the tax, this Court at page 491 stated, "These taxes were not levied directly against the United States or its property... (there was) no effort to hold the United States or its property accountable." And at page 493, "Lawful possession of property is a valuable right where the possessor can use it for his own personal benefit...There is no claim that the challenged taxes discriminate against persons holding government property. To the contrary the tax is a general tax which applies and has been applied throughout the state." (The same is true of the California possessory interest tax as has now been acknowledged by appellants in their Brief page 15, footnote 6.) The *Murray* Court distinguished its holding in *Allegheny, supra,* stating "Here state law specifically authorizes assessment against the person in possession and the taxing authorities were careful not to attempt to tax the Government's interest in the property" (as was the situation in the instant case), the Court concluding at page 495, "We find nothing in the Constitution which compels us to strike down these state taxes. There was no discrimination against the Federal

Government, its property or those with whom it does business. There was no crippling obstruction of any of the Government's functions, no sinister effort to hamstring its power, not even the slightest interference with its property. cf. *McCulloch* v. *Maryland," supra.*

In a companion case, *United States* v. *City of Detroit* 355 US 466, the Court upheld a state tax applied to a lessee of government property, the tax being measured by the value of Government property. The Court at page 470 recognized the commonplace principal of a tax on the "beneficial use of property itself." And at page 472, "Here we have a tax which is imposed on a party using tax-exempt property for its own 'beneficial personal use' and 'advantage', "(Citing cases including *Graves* v. *N.Y., supra.*)

This is precisely what the possessory interest tax in the instant case assesses.

The rationale is given by the court at page 474: "In the absence of such equalization (taxation of users of tax exempt property) the lessees of tax exempt property might well be given a distinct economic preference over their neighboring competitors, as well as escaping their fair share of local tax responsibility.... In this Court the trend has been to reject immunizing these private parties from non-discriminatory taxes as a matter of Constitutional law (cf. *Penn Dairies* v. *Milk Control Comm'n* 318 US 261).

In discussing the equal tax treatment of forest service employees, the voiding of the taxes assessed in the instant cases would have the following inequitable result. First, employees living in government owned houses located within the National Forests will not be required to pay any real property tax. Such employees will continue to send their children to schools supported by the local property tax, and receive all other County and State services, including roads, fire protection, welfare, and police protection paid for by

other real property, tax paying citizens. The Federal employee who resides just outside the boundary of the National Forest, but who works therein, and whose personal housing is leased for him by the United States, will not pay any possessory interest tax, but an increment of the lease payment from the Government to the owner thereof, will go to pay County taxes, and thus support the local schools and other services such employee, his wife and children are entitled to. The third employee, who works in the National Forest, but who lives just outside its boundaries in privately owned housing either rented directly from the private owner, or the employee purchasing such home, pays indirectly a portion of the lease payment as taxes or is assessed directly as the legal owner thereof based upon the fair market value of his land and improvements. All three employees, in this example, work for the same National Government are either "agents" or "instramentalities" thereof or are not, but in the first case according to appellants, the Supremacy Clause is violated but apparently not in the last two situations. This result is completely anamolous and unsupportable in law, reason or logic, or simple fairness to either the employees involved, or to the local government of which they are also citizens and, which supports them. It is also exceedingly unfair and a denial of equal protection to the rest of the taxpaying citizens of the County who are assessed for their interests in property to provide the revenue to operate local government, and who as a result must now pay more than their equitable share of taxes, to compensate for the windfall given to Federal employees, living in Government owned housing.

Appellee feels strongly that Congress did have this situation in mind when it adopted Title 16 United States Code Section 480 which provides as follows: "The jurisdiction, both civil and criminal, over persons within the national

forests shall not be affected or changed by reason of their existence, except so far as punishment of offenses against the United States therein is concerned; that the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens or be absolved from their duties as citizens of the State."

This statute has been construed to allow the taxation of private contractural interests in Government property located in the National Forests in *Wilson* v. *Cook* 327 US 474 and in *Georgia Pacific Corporation* v. *County of Mendocino, et al.* 327 F. Supp. 380. (C.A. 9)

If as contended by Appellants, these Forest Service employees, and their families are to be considered solely as "servants, agents, arms of, or wards" of the Federal Government, and thus immune from state, property taxation as constituent parts of the Federal Government, then perhaps their position is well-taken. However, it is an inescapable fact that such employees and their families are also citizens of the State in which they work and reside; one obligation of state citizenship being the payment of taxes to support such state government. *People* v. *Shearer* 30 Cal. 645. State Citizens generally have a place of relatively fixed location where they reside. Such citizens are assessed and pay taxes either directly if they own their residences, or indirectly if they rent or lease them. The individual appellants should be required to pay their fair share of such taxes. *Cohn* v. *Graves* 300 US 308, 313.

C. The California Possessory Interest Tax as Applied in the Instant Case, Creates No Burden on the Federal Government.

As was stated by the Court in *Graves* v. *New York,* 306 US 466 at page 480. "... when exemption from state taxa-

tion is claimed on the ground that the federal government is burdened by the tax, and Congress has disclosed no intention with respect to the claimed immunity, it is in order to consider the nature and effect of the alleged burden and if it appears that there is no ground for implying a constitutional immunity there is equally a want of any ground for assuming any purpose on the part of Congress to create an immunity. . . . "The present tax . . . is not a tax upon the (Government) or its property or income, nor is it paid by the . . . (Government), or from its funds."

In the instant case, there was absolutely no evidence to show any possible burden on or embarrassment to the Federal Government in the assessment or collection of these taxes. In their "Brief for Appellants' page 18, they speculate that the County could "impose conditions upon residence of Forest Service personnel." There was absolutely no evidence to support any such fear. The appellee has no interest in how or to whom, or under what conditions the Government assigns or allows its personnel to occupy its residences. But once possession of such residences has been effected, appellee believes it has the Constitutional right to place a tax on such possession, based on the personal value to the employees. This, it is submitted, is no different than the state being able to tax the *income* of such employee, once it has been paid to him by the Government.

While the amounts of taxes collected in this case are not large, individually or collectively, the ability of the state to collect such possessory interest taxes is extremely important. As was pointed out by the Court in *Board of Supervisors* v. *Archer* 13 CA 3rd 717, 727. "... due to the fact that about half the land in California is in the public domain, the taxation of possessory interests in the State is a significant revenue item ..." Furthermore, the number

of Federal employees working and living in California has reached substantial numbers.*

If a significant number of such employees are allowed to escape real property taxation solely because they reside in Government owned housing, located outside of federal enclaves, the ability of the state to provide essential services to them in the form of schools, roads, welfare, police, fire, public health and the multitude of other local services, financed at least in part by the local property tax, will be severely limited. There has been no good reason advanced, nor does any good reason exist, why they should not be required to assume and pay for their obligation of state and local citizenship.

CONCLUSION

For the reasons stated, the judgment of the Court of Appeal should be affirmed.

September 15, 1976.

Respectfully submitted,

Robert M. Wash,
County Counsel

James B. Waterman,
Deputy Attorney for Appellee
County of Fresno

---

*U. S. News & World Report Vol. LXXXI No. 7, August 16, 1976, page 22, 25, "States with the most Government jobs No. 1 California, 297,837 Federal Civilian Employees, 3.8% of all non-farm jobs in State."

Appendix

Constitutional and Statutory Provisions Involved

California Revenue and Taxation Code

§ 201. Property taxable

All property in this State, not exempt under the laws of the United States or of this State, is subject to taxation under this code.

(Stats. 1939, c. 154, p. 1280, § 201.)

California Revenue and Taxation Code

§ 4986. Uncollected tax penalty or costs; order for cancellation; grounds; public property not subject to sale for delinquent taxes; municipal taxes

(1) All or any portion of any uncollected tax, penalty, or costs, heretofore or hereafter levied, may, on satisfactory proof, be canceled by the auditor on order of the board of supervisors with the written consent of the county legal advisor if it was levied or charged:

(a) More than once.

(b) Erroneously or illegally.

(c) On a portion of an assessment in excess of the ratio of assessed value to the full cash value of the property as provided in Section 401 by reason of the assessor's clerical error.

(d) On improvements when the improvements did not exist on the lien date.

(e) On property annexed after the lien date by the public entity owning it.

(f) On property acquired prior to September 18, 1959, by the United States of America, the state, or by any county, city, school district or other political subdivision and which, because of such public ownership, became not subject to sale for delinquent taxes.

(2) (a) On property acquired after the lien date by the United States of America, if such property upon such acquisition becomes exempt from taxation under the laws of the United States, or by the state or by any county, city, school district or other public entity, and because of such public ownership becomes not subject to sale for delinquent taxes, no cancellation shall be made in respect of all or any portion of any such unpaid tax, or penalties or costs, but such tax, together with such penalties and costs as may have accrued thereon while on the secured roll, shall be transferred to the unsecured roll pursuant to Section 2921.5 of this code, and collection thereof shall be made and had as provided therein, except that the statute of limitations on any suit brought to collect such taxes and penalties shall commence to run from the date of transfer of such taxes, penalties and costs to the unsecured roll, which date shall be entered on the unsecured roll by the auditor opposite the name of the assessee at the time such transfer is made. The foregoing toll of the statute of limitations shall apply retroactively to all such unpaid taxes and penalties so transferred, the delinquent dates of which are prior to the effective date of the amendment of this section at the 1959 Regular Session.

If any property described in this subdivision is acquired by a negotiated purchase and sale, gift, or devise after the lien date but prior to the commencement of the fiscal year for which current taxes are a lien on the property, the amount of such current taxes shall be canceled and neither the person from whom the property was acquired nor the public entity shall be liable for the payment of such taxes. If, however, the property is so acquired after the commencement of the fiscal year for which the current taxes are a lien on the property, that portion only of such current taxes,

together with any allocable penalties and costs thereon, which are properly allocable to that part of the fiscal year which ends on the day before the date of acquisition of the property, shall be transferred to the unsecured roll and be collectible from the person from whom the property was acquired. The portion of such taxes, together with any penalties and costs thereon, which are allocable to that part of the fiscal year which begins on the date of the acquisition of the property, shall be canceled and shall not be collectible either from the person from whom the property was acquired nor from the public entity.

In no event shall any transfer of unpaid taxes, penalties or costs be made with respect to property which has been tax-deeded to the state for delinquency.

For purposes of this subdivision (a) if proceedings for acquisition of the property by eminent domain have not been commenced, the date of acquisition shall be the date that the conveyance is recorded in the name of the public entity or the date of actual possession by the public entity, whichever is earlier. If proceedings to acquire the property by eminent domain have been commenced and an order of immediate possession obtained prior to acquisition of the property by deed, the date of acquisition shall be the date upon or after which the plaintiff may take possession as authorized by such order of immediate possession.

(b) If at the time exemption from sale attaches to land or improvements acquired by a public entity the purchase price thereof is deposited in the registry of a court in an eminent domain proceeding, all delinquent taxes, penalties and costs which were or are a lien against such land or improvements and the pro rata share of the current taxes, penalties and costs which are a lien against such land or improvements, prorated for the fiscal year for which such

current taxes, penalties and costs are or will be due and payable, shall be paid out of the award. The date for such proration shall be at the time title was transferred to, or possession was taken by, the public entity, whichever time the court determines to have first occurred. If the amount of the current tax is not ascertainable at the time the proration is made the same shall be estimated and computed by the court based upon the last equalized assessed value of the property in its entirety regardless of any segregation which may occur by reason of the taking, and the tax rate levied on the property for the immediate prior year. The court shall further order canceled the public entity's portion of any prorated current tax. The subject of the amount of the taxes which may be due on the property shall not be considered relevant on any issue in the condemnation action, and the mention of said subject, either on the voir dire examination of jurors, or during the examination of witnesses, or as a part of the court's instructions to the jury, or in argument of counsel, or otherwise, shall constitute grounds for a mistrial in any such action.

No cancellation under paragraph (b) of subdivision (1) of this section shall be made in respect of all or any portion of any tax, or penalties or costs attached thereto, collectible by county officers on behalf of a municipal corporation without the written consent of the city attorney or other officer designated by the city council unless the city council, by resolution filed with the board of supervisors, has authorized the cancellation by county officers. The resolution shall remain effective until rescinded by the city council.

For the purpose of this subdivision the date of possession shall be the date after which the plaintiff may take possession as authorized by order of the court or as authorized by a declaration of taking.

(Stats.1939, c. 154, p. 1366, § 4986. Amended by Stats.1941, c. 448, p. 1739, § 1; Stats.1941, c. 1009, p. 2641, § 1; Stats. 1944, 3rd Ex.Sess., c. 5, p. 31, § 2, operative May 16, 1944; Stats.1947, c. 851, p. 2023, § 11; Stats.1955, c. 844, p. 1460, § 1; Stats.1959, c. 1023, p. 3045; § 3; Stats.1961, c. 644, p. 1849, § 1; Stats.1963, c. 989, p. 2250, § 1; Stats.1963, c. 1072, p. 2531, § 1; Stats.1966, 1st Ex.Sess., c. 147, p. 679, § 96; Stats.1967, c. 553, p. 1902, § 1.)

California Constitution Art. 13 § 1

§ 1. Taxable property; exemptions; public property

Section 1. All property in the State except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. The word "property," as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership; provided, that a mortgage, deed of trust, contract, or other obligation by which a debt is secured when land is pledged as security for the payment thereof, together with the money represented by such debt, shall not be considered property subject to taxation; and further provided, that property used for free public libraries and free museums, growing crops, property used exclusively for public schools, and such as may belong to this State, or to any county, city and county, or municipal corporation within this State shall be exempt from taxation, except such lands and the improvements thereon located outside of the county, city and county or municipal corporation owning the same as were subject to taxation at the time of the acquisition of the same by said county, city and county, or municipal corpora-

tion; provided, that no improvements of any character whatever constructed by any county, city and county or municipal corporation shall be subject to taxation. All lands or improvements thereon, belonging to any county, city and county or municipal corporation, not exempt from taxation, shall be assessed by the assessor of the county, city and county or municipal corporation in which said lands or improvements are located, and said assessment shall be subject to review, equalization and adjustment by the State Board of Equalization. The Legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this State.

Every act heretofore done and proceeding heretofore taken by this State or any taxing agency in the State in respect to the taxation of property belonging to the United States, is hereby validated and made legally effective from the date thereof, to the extent it would have been valid and legally effective if done or taken after the adoption of this amendment. (Amended Nov. 6, 1894; Nov. 8, 1910; Nov. 3, 1914; May 16, 1944.)

California Revenue and Taxation Code

§ 104. Real estate or real property

"Real estate" or "real property" includes:

(a) The possession of, claim to, ownership of, or right to the possession of land.

(b) All mines, minerals, and quarries in the land, all standing timber whether or not belonging to the owner of the land, and all rights and privileges appertaining thereto.

(c) Improvements.

(Stats.1939, c. 154, p. 1277, § 104.)

California Revenue and Taxation Code

§ 107. Possessory interests; security for payment of taxes; seizure and sale for delinquent taxes; suit against assessee

"Possessory interests" means the following:

(a) Possession of, claim to, or right to the possession of land or improvements, except when coupled with ownership of the land or improvements in the same person.

(b) Taxable improvements on tax-exempt land.

Except as provided in this section, possessory interests shall not be considered as sufficient security for the payment of any taxes. Leasehold estates for the production of gas, petroleum and other hydrocarbon substances from beneath the surface of the earth, and other rights relating to such substances which constitute incorporeal hereditaments or profits a prendre, are sufficient security for the payment of taxes levied thereon. Such estates and rights shall not be classified as possessory interests, but shall be placed on the secured roll.

In the event of delinquency in the payment of any installment of taxes on such leasehold estates or rights, they shall be subject to seizure and sale in the same manner as provided for the seizure and sale of possessory interests

in Sections 2914 to 2919, inclusive, at any time within three years after the delinquency. Suit may be brought against an assessee of such taxes in the event of delinquency in the payment thereof.

(Stats.1939, c. 154, p. 1277, § 107. Amended by Stats.1941, c. 8, p. 409, § 1, eff. Jan. 29, 1941, operative Feb. 1, 1941; 1943, c. 1143, p. 3078, § 1; Stats.1957, c. 753, p. 1968, § 1.)